



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
CONNECTICUT PILOT COMMISSION



CONNECTICUT PILOT COMMISSION
ANNUAL REPORT

JULY 1, 2004 – JULY 1, 2005

Pursuant to Conn. Gen. Stat. ch. 263, sec. 15-13c, the Connecticut Pilot Commission advises the Commissioner of Transportation ("DOT") on issues related to the licensure of marine pilots, the safe conduct of vessels, the setting of pilotage rates, and the protection of the ports and waters of Connecticut. The seven Commission members, who are appointed by the Governor and various legislative leaders, represent a broad spectrum of business, maritime, and environmental interests. The Commission currently includes members with expertise in admiralty law and marine regulation, environmental law, involvement in marine-related business, and experience as Merchant Marine and Naval officers. This is a report of the Commission's activities for the period July 1, 2004 through July 1, 2005.

Background

As is the case throughout the maritime world, merchant ships arriving at Long Island Sound ports are required to take aboard a local pilot, who has up-to-date knowledge about hazards to navigation, tides and current, communications, and vessel traffic. Conn. Gen. Stat. ch. 263, sec. 15-15. As advisors to the ship's Master, pilots typically direct the vessel's movement in restricted or congested waters, including docking. Pursuant to the Federal Boundary Waters Act, 46 U.S.C. sec. 8501(b) and Conn. Gen. Stat. ch. 263, sec. 15-15d, Connecticut and New York share authority to regulate pilotage on Long Island Sound. The Boundary Waters Act entitles New York-licensed pilots to pilot ships to all Connecticut ports and Connecticut-licensed pilots to pilot ships to New York ports on Long Island Sound. The two states are party to a 1999 Memorandum of Agreement ("MOA"), implemented by regulation, under which Connecticut-licensed pilots and New York-licensed pilots participate in a joint rotation to provide pilotage service for all ports on the Long Island Sound. Conn. Agencies Regs. Sec. 15-15a-17.

The DOT has authority to promulgate regulations respecting the licensing, conduct, and duties of Connecticut-licensed pilots as necessary to ensure public safety and protection of the environment. Conn. Gen. Stat. ch. 263, sec. 15-15a.

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The DOT also regulates pilotage fees. Conn. Gen. Stat. ch. 263, sec. 15-14. The Pilot Commission and DOT work closely with the New York Board of Commissioners of Pilots to coordinate the regulation of pilotage on Long Island Sound. The Pilot Commission and DOT also maintain an active working relationship with the U.S. Coast Guard, which regulates many aspects of merchant vessel operations.

During 2004, more than 500 deep-sea vessels subject to compulsory state pilotage called at Long Island Sound Ports. These ships generated pilotage fees of approximately \$1.7 million, inclusive of unregulated docking and standby fees. U.S. flag ships sailing under enrollment and naval vessels are not required to take state-licensed pilots and are not handled under the Joint Rotation.

The Commission Members

Chairman: Michael J. Eisele. Appointed by the Governor for a term ending June 30, 2008 to represent non-recreational maritime industry interests.

Vice-Chairman: Vernon C. Miller, Jr. Appointed by the House Minority Leader for a term ending June 30, 2007 as a member with expertise in admiralty law.

Member: Joseph X. Staneko. Appointed by the Senate Minority Leader for a term ending June 30, 2006 as a retired ship's Master.

Member: David T. Shuda. Appointed by the Speaker of the House for a term ending June 30, 2008 to represent non-recreational maritime industry interests.

Member: David E. Pohorylo. Appointed by the Senate Majority Leader for a term ending June 30, 2008 to represent environmental interests.

Member: William C. Gash, Jr. Appointed by the Senate President Pro Tempore Donald E. Williams, Jr. for a term ending June 30, 2007 to represent environmental interests.

Member: Joseph Russo. Appointed by the House Majority Leader for a term ending June 30, 2007 to represent non-recreational maritime industry interests.

Current Issues

Joint Rotation Operation

Pursuant to the MOA and implementing regulation, participation in the Joint Rotation is mandatory for both Connecticut-licensed pilots and New York-licensed pilots. Participating pilots receive assignments to vessels subject to compulsory state pilotage in turn. However, unlike most other jurisdictions, pilots participating in the Joint Rotation are not compelled to belong to a single

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business entity. There are currently four separate organizations, each operating its own pilot boats and providing for time-off by swapping turns. Connecticut currently licenses 17 marine pilots, 9 of whom are also licensed by the New York Board. As a condition of maintaining their Connecticut licenses, all of these pilots also possess federal licenses endorsed for first-class pilotage. The 8 pilots who are only licensed by Connecticut participate in the Connecticut side of the Joint Rotation, and are allocated 70% of vessel movements subject to the Joint Rotation pursuant to the terms of the MOA. The 9 pilots who are licensed by both Connecticut and New York participate on the New York side of the Joint Rotation and are allocated 30% of applicable vessel movements. The Joint Rotation is administered by Sound Pilots, Inc. (d/b/a Block Island Pilots), selected by agreement of the DOT and the New York Board. The operation of the Joint Rotation is overseen by a Rotation System Executive Board, consisting of three pilots from the Connecticut side and three pilots from the New York side of the rotation.

The implementing regulations require an annual evaluation of the Joint Administrator's performance. The Pilot Commission began an evaluation in early 2005 with an intention to make a recommendation to the DOT. That evaluation is in progress.

There have been a number of disputes regarding the operation of the Joint Rotation since its implementation in early 2004. In early 2005, one pilot complained about the inclusion of enrolled vessels (coastwise U.S.-flag vessels not subject to compulsory state pilotage) in the rotation. Upon review by DOT, it was determined that the MOA and implementing regulation did not provide authority to include enrolled vessels in the MOA absent agreement of all participating pilots. The Joint Administrator subsequently withdrew enrolled vessel work from the Joint Rotation. Enrolled work is now handled by individual pilots under the exclusive authority of their federal licenses.

There have also been several accounting disputes among various pilot groups, discussed more fully below in Litigation.

Boarding Stations

The Commission's mandate specifically includes the provision of advice regarding the designation of pilot boarding stations. Conn. Gen. Stat. ch. 263, sec. 15-13c(e)(9). On June 9, 2004, the Commission issued a comprehensive report recommending that DOT establish by regulation mandatory pilot boarding and disembarkation stations off the coast of Point Judith, Rhode Island and Montauk Point, New York. The Commission also recommended that as an interim measure, DOT require use of the boarding/disembarkation stations under existing regulation. After reviewing industry comments and consulting with the New York Board and U.S. Coast Guard, the DOT largely accepted the Commission's recommendation, issuing instructions to Connecticut-licensed

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pilots dated March 1, 2005 requiring use of the boarding and disembarkation stations. The DOT's instructions are consistent with the New York Board's requirements for the boarding and disembarkation of New York-licensed pilots.

The Commission has heard a substantial number of comments from industry and the pilot community regarding implementation of the DOT's instructions. These comments generally concern economics and safety issues related to use of the boarding and disembarkation stations. The Commission continues to monitor use of the stations and will report to DOT if it believes that changes are warranted.

Broadwater Energy LNG Project

In November, 2004 Broadwater Energy submitted to the U.S. Coast Guard a letter of intent to construct and operate a floating storage and regasification unit for LNG in the New York waters of Long Island Sound. The proposed FSRU would receive shipments from LNG carriers for regasification and transmission ashore via submarine pipelines. Broadwater Energy anticipates that the project would involve 100 to 160 vessel calls annually. These ships are expected to be up to 1,000' LOA, drawing as much as 39'.

In May, 2005 the Coast Guard conducted a Port and Waterway Safety Assessment, including issues related to the proposed FSRU. Pilot Commissioners William Gash and David Pohorylo attended on behalf of the Commission. Further public meetings are scheduled for September, 2005.

The Federal Energy Regulatory Commission, in cooperation with the Coast Guard and other agencies, are continuing to evaluate the proposed FSRU. The Coast Guard is principally responsible for addressing issues related to navigation safety and port security. It is not anticipated that the Pilot Commission will have any role in the licensing process other than to respond to any inquiries from the regulatory agencies. However, the Pilot Commission believes that the project has implications for pilotage, particularly given the number, size, and complexity of LNG vessels, and is considering making recommendations to DOT with respect to the selection and qualification of pilots as well as the imposition of training requirements. The Pilot Commission will also consult closely with the New York Board in an effort to implement uniform requirements for the pilotage of these vessels.

Pilotage Rates

Pursuant to Conn. Gen. Stat. sec. 15-14, the Commissioner is obligated to set pilotage rates. The Commission is charged with the duty to advise the Commissioner on "the establishment of fair and reasonable rates of pilotage . . . including establishment of a hearing process for the setting of fair and reasonable rates of pilotage[.]" Conn. Gen. Stat. Sec. 15-13c. Pilotage rates

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have not been changed since 1983, although certain unregulated fees rates (principally docking fees) have been periodically adjusted.

During 2004, the Commission issued a request for comments related to pilotage rates, culminating in a June 10, 2004, public meeting at which the Commission heard comments and discussed making a recommendation to DOT regarding the rate structure. In May, 2005 the Commission and DOT received a specific proposal for a rate increase from Connecticut State Marine Pilots, Inc., representing several Connecticut-licensed pilots.

The rate issue has become critical due to recent increases in fuel prices, which substantially impact the pilots' operating costs. In addition, the Commission believes that any new rate structure should fairly compensate pilots, justify the substantial capital investment required to acquire and maintain pilot boats, and provide for training costs. These factors must be balanced against a desire to keep Connecticut ports competitive with other east coast ports and provide consumers of pilot services with quality pilotage at reasonable costs. In particular, the Commission believes that the rate structure should encourage the consolidation of pilot boat services.

Pursuant to the MOA, each state is entitled to set pilotage rates charged by pilots operating under its authority. However, the Commission believes that it is highly desirable to coordinate any rate change with the New York Board, which requires legislative approval of certain components of the pilotage rates.

The Commission intends to continue review of this issue, with an intention to make a comprehensive recommendation to the DOT as soon as feasible.

Licensing Moratorium

Pursuant to Conn. Gen. Stat. sec. 15-13c(e)(3), the Commission is responsible for advising the DOT regarding "the appropriate number of state-licensed pilots necessary for safe, efficient and proper operations[.]" For a number of years, the Commission has recommended that the DOT maintain a moratorium on the issuance of new licenses. In a report dated January 26, 2005, the Commission recommended that DOT continue the moratorium through 2005. The Commission noted that there are currently eight Connecticut-licensed pilots participating on the Connecticut side of the joint rotation, with two of those pilots working only part-time. The Commission believes that the current number of pilots are capable of efficiently handling the volume of work and that there is no evidence of an upward trend in the amount of vessel traffic to justify the immediate licensure of new pilots.

As in previous years, the Commission recommended that the moratorium not preclude qualified pilots who are participating in the joint rotation from obtaining geographic extensions or other endorsements on their current licenses.

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The average age of the pilots participating on the Connecticut side of the rotation is 61; the youngest full-time participant is 54. Although Connecticut has no compulsory retirement age (the New York Board recently voted to increase its mandatory retirement age from 65 to 70), the Commission recognizes that it is likely that pilots will begin to retire within the next few years. Accordingly, the Commission has been working on pilot selection, training and apprenticeship issues. We expect to make a recommendation to the DOT regarding changes to the existing regulations sometime in 2006.

Litigation

On May 9, 2005, Captain Charles Jonas initiated an administrative proceeding with the DOT, seeking a declaratory ruling with respect to the operation of the Joint Rotation. In Re Petition to Connecticut Department of Transportation for Declaratory Ruling by Charles Jonas, No. A&P:05-1. In this proceeding, Captain Jonas challenges the manner in which assignments are made by the Joint Administrator as well as the distribution of pilotage fees. Captain Jonas had previously filed a Complaint in Superior Court concerning the same subject matter. That case was dismissed on jurisdictional grounds. On July 8, 2005 the DOT issued an Order requiring any petition for intervention to be filed by July 29 and any additional supporting documents to be filed by September 8, 2005. The Commission is continuing to monitor this proceeding.

In August, 2003 New England Shipping Company, Inc., a local agency representing ship owners and charterers, filed suit in the U.S. District Court for the Eastern District of New York against Block Island Pilots, the New York Board, and related individual defendants. New England Shipping Company, Inc. v. Block Island Pilots, et al., Civil Case No. 03-4273. In this case, New England Shipping Company essentially seeks a declaration that New York does not have exclusive jurisdiction to regulate pilotage in western Block Island Sound, a position taken by the New York Board prior to implementation of the MOA. On February 11, 2005 the Commission made a recommendation to DOT that it participate in the resolution of this case as amicus curie or as an intervening party. On April 29, 2005 DOT advised the Commission that it would not seek to intervene or otherwise participate in the case, but that it would reconsider this position as the case progressed. The Commission is continuing to monitor this litigation.

We note that Commissioner David Pohorylo is employed by New England Shipping Company, Inc. and has recused himself from any participation in the Commission's deliberations regarding this matter.

Other Issues

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In October 2004, the legislature abolished the Connecticut Port Authority and established the Connecticut Maritime Commission, charged with advising the Governor, DOT, and the legislature on issues related to the maritime industry. Pilot Commissioner Dave Shuda was appointed to serve on the Maritime Commissioner.

During November 2004, the Coast Guard placed New Haven Harbor lighted channel buoy #2 on-station. The Pilot Commission had long supported the lighting of the #2 buoy. The Commission communicated its support for this proposal to the First Coast Guard District in December, 2003.

During 2004 – 2005, the Pilot Commission continued to monitor the Coast Guard's Port Access Route Study for Block Island Sound and Long Island Sound as well as the designation of anchorage/lightering areas in Long Island Sound.

On May 2, 2005 the Pilot Commission made a recommendation to DOT in support of state funding for the New Haven Physical Oceanographic Real Time System ("PORTS").

On May 20, 2005 the Pilot Commission provided comments to the First Coast Guard District with respect to its proposal to eliminate the Block Island South Entrance Obstruction Lighted buoy "BIS". The Pilot Commission opposed removal of the buoy.

Long-term Objectives

In cooperation with DOT, the Pilot Commission has been exploring the possibility of legislation to change the composition of the Commission and to provide it with limited powers to regulate certain aspects of pilotage. The Commission is soliciting industry and pilot input for any legislative initiative. We expect that these efforts will continue through the end of 2005 and into early 2006.

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Michael J. Eisele
Chairman, Connecticut Pilot Commission